IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE : G. BIKSHAPATHY

AND
THE HON'BLE MR JUSTICE : B.SESHASAYANA REDDY

W.P.Nos. 5877 & 6276 of 2004

W.P.No. 5877 of 2004

Between:

Employees State Insurance Corporation, rep by its Regional Director,
Regional Office, A.P. 5-9-23, Hill Fort Road, Hyderabad - 500 063.

……Petitioner

AND

B. Shyam Sunder, S/o. B. Rajasekhar,
Branch Office, ESI Corporation, Visakhapatnam,

R/o. B-24/6, ESIC Staff Qtrs. S.R. Nagar,

Sanathnagar, Hyderabad - 500 038. ……Respondent

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction particularly one in the nature of Writ of Certiorari, and quash the order dated 04-2-2004 in OA No. 1177 of 2000 / 1308 of 2003 after calling for the records from the file of Central Administrative Tribunal, Hyderabad.

W.P.No. 6276 of 2004

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Counsel for Petitioner in both W.Ps. : Mr.B.G.RAVINDER REDDY

Counsel for sole Respondent in both W.Ps. : Mr.J.SUDHEER

The Court at the stage of admission, made the following :

COMMON ORDER: (per the Hon'ble Sri Justice G.Bikshapathy)

Both the writ petitions can be disposed of by this common Order as they arise out of the common order of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad in O.A.Nos.1177 of 2000 and 1308 of 2003 dated 4.2.2004.

2. The case has a very long and chequered career and in fact, it is a classic case,

where the matters are being dragged to the Courts at every intermediate stage right from the initial stage of the disciplinary enquiry till the final orders are passed by the authorities.

3. The petitioner is the Employees' State Insurance Corporation, who filed the writ petitions challenging the orders passed by the Tribunal in the O.As. referred to above. The respondent was initially appointed as L.D.C on 1-11-1986 under the Schedule Tribe quota. However, a charge memo was issued on 29-10-1993 alleging that he did not belong to Schedule Tribe and therefore action was sought to be initiated against him. Challenging the said charge memo, he filed O.A.No. 1479 of 1994 before the Central Administrative Tribunal and the Tribunal by an order dated 25.9.1997 disposed of the O.A. setting aside the charge sheet and directing the authorities to accommodate the respondent in O.C. quota by treating him as O.C. candidate.

4. While so, the respondent was promoted from the rank of L.D.C. to U.D.C. and was transferred to Visakhapatnam by an order dated 12.11.1999. Accordingly he was relieved from Hyderabad. Questioning that order and also by including some other reliefs with regard to pay fixation, the respondent filed O.A.No. 506 of 2000 and the Tribunal by an order dated 6.4.2000 disposed of the same directing the authorities to consider the case of the respondent regarding seniority. While so, the authorities prepared a seniority list in the cadre of L.D.Cs. At that point of time, the respondent filed fresh O.A.No. 585 of 2000 challenging the order of transfer dated 12.11.1999. The said O.A. was dismissed on 17.7.2000. Thereafter he filed Review Application No. 60 of 2000 and the same was also dismissed. Against the said order, he filed W.P.No.4460 of 2001 and this Court dismissed the same by order dated 20.3.2001.

5. While the matter stood thus, since the respondent was unauthorisedly absent, a charge memo was issued to him on 30.3.2000 alleging that he was unauthorisedly absent from 13.11.1999 onwards. Challenging the said charge memo, he filed O.A.No. 1177 of 2000 and the said O.A. was dismissed on 2.11.2000. Against the said dismissal, he filed W.P.No. 342 of 2001 and this Court remanded the matter to the Tribunal by order dated 30.7.2003 for fresh consideration. During this interregnum, the Department appointed an Enquiry Officer to conduct an enquiry into the charges levelled against the respondent. The Enquiry Officer conducted enquiry and submitted enquiry report dated 27.6.2003 and 3.7.2003 holding that the charges

were not proved. However, the disciplinary authority, while disagreeing with the findings of the Enquiry Officer, issued a show cause notice on 7.7.2003 calling upon the respondent to submit his explanation. It was sought to be served by the department, but in vain for the reason that he was not found either at Visakhapatnam or at Hyderabad where he was allotted a quarter while he was working as L.D.C. Finally, an order was passed by the authorities on 30.9.2003 imposing the punishment of compulsory retirement. Since the O.A. was already pending wherein a challenge was made to the charge sheet, the employee appears to have filed a miscellaneous application seeking amendment of the prayer, thereby including the challenge made to the order of compulsory retirement dated 30.9.2003. That is not the end of the matter. Since the respondent continued to be absent unauthorisedly, the department issued another charge sheet dated 2.2.2001 for the subsequent period of unauthorised absence. However, he reported for duty on 16.4.2001 and after two months, he again went on unauthorised absence from 25.6.2001, for which a charge sheet was issued and enquiry was conducted. The Enquiry Officer, as already held in the earlier enquiry, held in this charge sheet also that the charges were not proved. Against the said finding of the Enquiry Officer, the disciplinary authority dissented with the findings of the Enquiry Officer and issued another show cause notice dated 21.7.2003 calling upon the respondent to submit his explanation. The said show cause notice was sought to be served on the respondent, but the department could not succeed in serving the same, but however, notice was pasted on the door of his residence. Thereafter, as there is no response, he was dismissed from service by order dated 1.10.2003. Challenging the said order, the respondent filed O.A.No.1308 of 2003. Both the O.As. came to be disposed of by the learned Tribunal holding that the punishment imposed on the respondent is not sustainable. Against the said orders, the present writ petitions have been filed by the Petitioner-Corporation.

6. The learned counsel for Petitioner-Corporation, Mr.B.G.Ravindra Reddy submitted that the order passed by the Tribunal is wholly illegal and not sustainable in law. The finding recorded by the Tribunal that there was no proper notice on the dissent order passed by the disciplinary authority and therefore it amounted to violation of principles of natural justice is wholly misconceived. He submits that the show cause notice was sought to be served on the respondent by the officials of the Corporation, but in vain. The officials of the Corporation went to the residence of the respondent at Hyderabad where the inmates of the house refused to receive the

show cause notice. Therefore, the notice was pasted on the door of the house. In such circumstances, it was deemed to have been properly served and on this ground alone, the order of the Tribunal is liable to be set aside. He also submits that the other finding of the learned Tribunal that in case of unauthorised absence, the consequence of unauthorised absence ought to have been informed to the employee, is also not correct, as the same in fact was informed to the respondent. Therefore on this ground also, the learned counsel submits that the said finding is wholly misconceived and the same is liable to be set aside. He also tried to sustain that both the orders of compulsory retirement as well as order of dismissal are sustainable inasmuch as the orders were passed in respect of two charges framed against the respondent independently. He also submits that the employee failed to avail the statutory remedy of appeal and therefore, on this ground alone, the orders passed by the Tribunal are to be set aside and the employee must have filed appeal before the appellate authority.

7. On the other hand, the learned counsel for respondent-employee vehemently submitted that the respondent has been victimized right from the date of his appointment and this was noticed by the Tribunal and found that the employee is being subjected to unnecessary departmental enquiries and the Tribunal also came to a correct conclusion that there was violation of principles of natural justice and that the department contravened the directions issued by the Government with the regard to intimation of consequences of unauthorised absence. Thus, he submitted that the orders of the Tribunal are legal.

8. We have heard the learned counsel for petitioner-Corporation and the learned counsel for respondent-employee.

9. It is not in dispute that the respondent has been approaching the Tribunal and this Court time and again seeking various reliefs, but that should not deter this Court from considering the matter on merits. Two charge sheets were issued to the respondent for his unauthorised absence and ultimately an enquiry was conducted and punishments were imposed. The question that falls for consideration is, while the Enquiry Officer exonerated the employee of the charges and when the disciplinary authority is disagreeing with the findings of the enquiry, any notice is required to be given? It is well settled principle that the employee is entitled for such a notice when the disciplinary authority disagrees with the findings of the Enquiry

Officer. But, in the instant case, even a show cause notice was sought to be served on the employee which could not be served for various reasons and that was construed as violation of principles of natural justice by the Tribunal. The learned counsel for Petitioner-Corporation submits that whatever possible steps according to the rules were taken to serve the notice and when employee evades to take the same, it must be treated as a proper service of notice and that the orders passed as such, ought to have been upheld. Mr.J.Sudheer, learned counsel appearing for the respondent-employee submits that a gross violation of principles of natural justice has been caused which completely disabled the employee from making any defence attacking the order of punishment passed by the authorities and that the order of the Tribunal is legal and valid.

10. It is to be noted in this regard that when a notice was sought to be served on the respondent, the same could not be served at Visakhapatnam, where his posting has taken place, as he was in unauthorised absence from 25.6.2001, for the reasons best known to him. Therefore there was no alternative for the department to take steps to serve the notice at the residence of the respondent which was not accepted by the inmates of the house. We are also unable to understand as to why the employee has been continuously absent for years together without there being any reasonable cause, but if we record any finding on this aspect, it would definitely influence the authorities on this aspect. Keeping in view the facts and circumstances of this case and the fact that the show cause notice even though sought to be served could not be served, we find that the Tribunal instead of setting aside the entire disciplinary proceedings, ought to have given one more chance to the authorities to serve the show cause notice on the employee and direct the authorities to proceed further in the matter. Therefore, on this ground, we are inclined to modify the order passed by the Tribunal instead of setting aside the entire orders of punishment without giving any scope for the authorities to rectify the omissions. We find that the employee should be given one more chance to answer the show cause notices dated 7.7.2003 and 21.7.2003 issued by the authorities. Accordingly, without going into other contentions, the order of the Tribunal as also the orders of punishment are set aside on this ground alone and the writ petitions are disposed of with the following directions:

i. That the show cause notices shall be served on the respondent-

employee within a period of two weeks from the date of receipt of a copy of this order and the employee shall submit appropriate explanation within a period of three weeks thereafter.

ii. Copies of the said show cause notices shall also be sent to the learned counsel appearing for respondent-employee before this Court, so as to ensure that the show cause notices are served on the employee to enable the authorities to proceed further in the matter.

iii. The authorities shall pass appropriate orders within a period of three months thereafter.

iv. Since the respondent has not joined duty right from 25.6.2001, status quo shall be continued till the final orders are passed. The authorities dealing with the matter shall pass orders uninfluenced by any of the observations or findings made in this regard by this Court or by the Central Administrative Tribunal.

The writ petitions, with the above observations and directions, are disposed of. No costs.

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G.BIKSHAPATHY, J

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B.SESHASAYANA REDDY, J

Dated: 15th July 2004.

DA/TSY

To

1. The Registrar, Central Administrative Tribunal, Hyderabad Bench,

Hyderabad.

2. B. Shyam Sunder, S/o. B. Rajasekhar, Branch Office, ESI Corporation,
Visakhapatnam, R/o. B-24/6, ESIC Staff Qtrs. S.R. Nagar,

Sanathnagar, Hyderabad - 500 038.

3. Mr.J.Sudheer, Advocate, High Court of A.P, Hyderabad.

(along with show cause notices dated 7.7.2003 and 21.7.2003)

4. Two CD copies.